

Owensby, et al. vs. City of Cincinnati
November 6, 2003

DAVID WILLIAM HUNTER, JR.

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

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ESTATE OF ROGER D.      :
OWENSBY JR., et al.,   :
                        :
      Plaintiffs,       : Case No. 01-CV-769
vs.                     : (Judge S. A. Spiegel)
                        :
CITY OF CINCINNATI,     : VOLUME I
et al.,                 :
                        :
      Defendants.      :
- - - - -

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Videotaped deposition of DAVID WILLIAM

HUNTER JR., a witness herein, called by the

plaintiffs for cross-examination, pursuant to the

Federal Rules of Civil Procedure, taken before me,

Wendy Davies Welsh, a Registered Diplomate Reporter
and Notary Public in and for the State of Ohio, at

the offices of Helmer, Martins & Morgan Co. LPA,

1900 Fourth & Walnut Centre, 105 East Fourth Street,

Cincinnati, Ohio, on Thursday, November 6, 2003, at

2:43 p.m.

Owensby, et al. vs. City of Cincinnati
November 6, 2003

DAVID WILLIAM HUNTER, JR.

Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. Don Stiens, Esq. 4 Frederick M. Morgan Jr., Esq. Helmer, Martins & Morgan Co. LPA 5 Suite 1900, Fourth & Walnut Centre 105 East Fourth Street 6 Cincinnati, Ohio 45202 Phone: (513) 421-2400</p> <p>7 John J. Helbling, Esq. 8 The Helbling Law Firm, L.L.C. 3672 Springdale Road 9 Cincinnati, Ohio 45251 Phone: (513) 923-9740</p> <p>10 On behalf of the Defendants City of Golf Manor, 11 Stephen Tilley, Roby Heiland and Chris Campbell:</p> <p>12 Wilson G. Weisenfelder Jr., Esq.. 13 Rendigs, Fry, Kiely & Dennis 900 Fourth & Vine Tower 14 One West Fourth Street Cincinnati, Ohio 45202-3688 15 Phone: (513) 381-9200</p> <p>16 On behalf of the Defendants City of Cincinnati, 17 Darren Sellers, Jason Hodge:</p> <p>18 Geri Hernandez Geiler, Esq. 19 Assistant City Solicitor and 20 Julie F. Bissinger, Esq. Chief Counsel Department of Law 21 Room 214, City Hall 801 Plum Street Cincinnati, Ohio 45202 22 Phone: (513) 352-3346</p> <p>23</p> <p>24</p>	<p>1 Federal Rules of Civil Procedure, may be taken at</p> <p>2 this time by the notary; that said deposition may be</p> <p>3 reduced to writing in stenotype by the notary, whose</p> <p>4 notes may then be transcribed out of the presence of</p> <p>5 the witness; and that proof of the official</p> <p>6 character and qualifications of the notary is</p> <p>7 expressly waived.</p> <p>8</p> <p>9</p> <p>10 I N D E X</p> <p>11 Examination by: Page</p> <p>12 Mr. Martins 5</p> <p>13</p> <p>14</p> <p>15 E X H I B I T S</p> <p>16 Page</p> <p>17</p> <p>18 Deposition Exhibit 6A 89</p> <p>19 Deposition Exhibit 54 29</p> <p>20 Deposition Exhibit 55 43</p> <p>21 Deposition Exhibit 56 62</p> <p>22 Deposition Exhibit 57 64</p> <p>23 Deposition Exhibit 58 67</p> <p>24</p>
Page 3	Page 5
<p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, 3 Patrick Caton, Jason Hodge, Victor Spellman and Darren Sellers:</p> <p>4 Donald E. Hardin, Esq. Hardin, Lefton, Lazarus & Marks, LLC 5 915 Cincinnati Club Building 30 Garfield Place 6 Cincinnati, Ohio 45202 Phone: (513) 721-7300</p> <p>7 On behalf of the David William Hunter Jr.:</p> <p>8 Jay Clark, Esq. 9 114 East 9th Street Suite 400 10 Cincinnati, Ohio 45202 Phone (513) 587-2887</p> <p>11 Also present:</p> <p>12 Richard W. Grubb, Videographer</p> <p>13 Lisa Danstrom, Law Clerk 14 Helmer, Martins & Morgan Co., L.P.A.</p> <p>15 Mr. Roger Owensby</p> <p>16 Mrs. Brenda Owensby</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>STIPULATIONS</p> <p>It is stipulated by and among counsel for the respective parties that the deposition of DAVID WILLIAM HUNTER JR., a witness herein, called by the plaintiffs for cross-examination, pursuant to the</p>	<p>1 VIDEOGRAPHER: Time is 2:43 p.m. The date</p> <p>2 is November the 6th. The year is 2003.</p> <p>3 If you'd please swear the witness, ma'am.</p> <p>4 DAVID WILLIAM HUNTER JR.</p> <p>5 being by me first duly cautioned and sworn, deposes</p> <p>6 and says as follows:</p> <p>7 VIDEOGRAPHER: We're on the record, Mr.</p> <p>8 Martins. This is videotape number 1, sir.</p> <p>9 CROSS-EXAMINATION</p> <p>10 BY MR. MARTINS:</p> <p>11 Q. Sir, would you state for the record your</p> <p>12 full name, please.</p> <p>13 A. David William Hunter Jr.</p> <p>14 Q. And your age?</p> <p>15 A. 36.</p> <p>16 Q. Date of birth?</p> <p>17 A. 5/20/67.</p> <p>18 Q. What is your height?</p> <p>19 A. 5' 7."</p> <p>20 Q. And on November 7th of 2000 what was your</p> <p>21 weight?</p> <p>22 A. Approximately 175.</p> <p>23 Q. Have you ever had your deposition taken</p> <p>24 before?</p>

Page 2 - Page 5

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Owensby, et al. vs. City of Cincinnati
November 6, 2003

DAVID WILLIAM HUNTER, JR.

Page 54

1 recollection of seeing Roger Owensby before
2 September of 2000?
3 A. N--
4 Q. Correct?
5 A. No. As far as what I just said.
6 Q. Right.
7 A. I know it's kind of confusing, but I'm
8 trying to answer as truthful as possible.
9 Q. Right. You have no recollection of seeing
10 Roger Owensby before September of 2000?
11 A. Right. Okay.
12 Q. Okay. Walk me through what happened in
13 September of 2000.
14 A. Me and Officer Jorg were working
15 plainclothes, old clothes, and we were doing an
16 investigation in front of the Sam's Drive Thru. It
17 was three to four individuals that we observed
18 making drug transactions. We wanted to stop those
19 individuals.
20 Officer Jorg stayed with -- with one or
21 two of the individuals and then two of the
22 individuals went across the street, across from
23 Sam's Drive Thru, across -- that would be Seymour,
24 in the direction of Huntington Meadows Apartment

Page 55

1 complex. So I responded across the street behind
2 them.
3 Another uniform car -- another uniform car
4 met me across the street, and that officer was
5 Officer Walker. I advised Officer Walker to go
6 around, because I wanted him to flank the two guys
7 we were trying to catch up to.
8 Because I could pretty much walk up to
9 them, because they probably wouldn't -- wouldn't
10 have taken me as being a police officer, but Officer
11 Walker was in uniform of the day.
12 After we had that discussion, I started in
13 one direction. Officer Walker started in another
14 direction. That's when Mr. Owensby alerted the
15 individuals that we were trying to catch up to to
16 apprehend that the police were coming and that we
17 were in the area. So they got away, because they
18 had a jump on us anyway, because -- and they're
19 already behind -- around the building.
20 So I walked up to Mr. Owensby and I put my
21 left hand on his shoulder. And I said, "What's up?"
22 And he replied, "What's up?"
23 And then I said, "You know, you can't be
24 doing what you just did."

Page 56

1 And he said, "What's that?" Or something
2 to that nature.
3 I said, "You can't be telling people" --
4 as I was saying this to him, I reached into my shirt
5 with my other hand. I was wearing my badge on a
6 chain around my neck. "You can't be telling --
7 you -- you can't be warning people that the -- the
8 police is here. That's -- and -- that's interfering
9 with an investi"--
10 As I was saying investigation or whatnot,
11 I flipped my badge out and it dropped down dangling
12 around my neck. When he saw my badge, he pushed me
13 off him, and I grabbed the back --
14 He had a hooded sweat shirt on. I grabbed
15 the back of his sweat shirt, and he tugged and
16 pulled and his sweat shirt ripped. And I was just
17 basically standing there holding his sweat shirt,
18 because he ripped right out of it.
19 At that point I -- I actually drew my
20 weapon. And I told him, "Don't move." You know,
21 "Freeze." He -- he kind of faked to the left, to
22 the right or whatever, and took off running. I had
23 no intention of shooting. I -- I didn't have the
24 authority to shoot him, and he probably knew that.

Page 57

1 That's why he probably took off running.
2 I gave chase. We ran through Huntington
3 Meadows, between the buildings, out onto Rhode
4 Island, into the intersection of Rhode Island and
5 Seymour.
6 Right there at the traffic light is a
7 crosswalk. There was a car stopped at a red light.
8 I was chasing Mr. Owensby around the car. We
9 actually went -- circled the car once or twice. And
10 then he proceeded toward -- in the direction -- on
11 Seymour in the direction of Reading Road down the
12 sidewalk.
13 At that point I was able to put my --
14 secure my weapon and I went to Mace, my chemical
15 spray. He was running down the sidewalk, and at
16 some point he tripped and fell on his own. And I
17 was trying to run up to him to Mace him, but I was
18 running and spraying at the same time. So some of
19 the chemical irritant sprayed back toward me.
20 He was on the ground. He managed to make
21 his way by using his hands and his feet, making his
22 way back to his feet. He then ran in between some
23 apartment buildings.
24 I continued to chase him. He ran into one

Page 54 - Page 57

Owensby, et al. vs. City of Cincinnati
November 6, 2003

DAVID WILLIAM HUNTER, JR.

<p style="text-align: right;">Page 58</p> <p>1 of the apartment buildings, into the hall. And I 2 stopped. I called out exactly where I was at and 3 requested another car meet me there, so we can go 4 and check the hallway. 5 When another car -- when another officer 6 responded to my location, we went inside and we just 7 assumed that he went inside one of the apartment 8 buildings. Or he may have made it out the back, I 9 don't know, because I did not go -- I did not follow 10 him in. 11 Q. Anything else? 12 A. After that happened, went back to the two 13 guys that we did have under arrest. We questioned 14 the one individual if he knew the -- the guy -- 15 the -- the first guys that we were actually after. 16 And then later on, and this kind of -- I 17 can't remember exactly how it came up, but we got 18 the nickname of LA from one of the suspects. Well, 19 actually, one of the people that we arrested. And 20 they -- they stated that that was the individual 21 that ran from me. 22 And -- and that's all we knew at that 23 particular time as far as any kind of 24 identification. His name is -- his -- his nickname</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Where was Officer Walker? 2 A. I don't know at that time. 3 Q. Okay. 4 A. I don't know. 5 Q. You and he had split up? 6 A. Yes. 7 Q. When was the next time you saw Officer 8 Walker? 9 A. Hmm. When I was standing outside the 10 apartment building where the suspect had ran into, 11 where I lost him. 12 Q. Where you were waiting for backup? 13 A. Yes. 14 Q. And when Officer Walker showed up, did he 15 have anyone in custody? 16 A. No, not when he showed up. 17 Q. Okay. At the time when Officer Walker 18 showed up, did -- did you and he then enter the 19 apartment building? 20 A. I remember going to the -- to the -- yeah, 21 just -- I mean, just like right through the door and 22 that's it. I mean, that was as far as we went -- I 23 went. I don't remember if he stepped in or not. 24 Q. Okay. But at that point is it fair to say</p>
<p style="text-align: right;">Page 59</p> <p>1 was LA and he stayed or be up in the Huntington 2 Meadows area. 3 Q. Okay. The -- the people that were -- that 4 gave you the information of the nickname of LA was 5 one of the two people that Officer Jorg had 6 arrested? 7 A. I -- I think it was. 8 Q. You didn't arrest anyone? 9 A. No. 10 Q. Right? 11 A. Huh-uh. 12 Q. Did Officer Walker arrest anyone? 13 A. I can't really remember exactly. I -- I 14 just know that when I came back, there was two 15 people. And I don't know exactly who -- who 16 arrested them or, you know, but it was a total of 17 four that we wanted altogether. 18 Q. When you came back -- 19 A. And two got away. 20 Q. I'm sorry. 21 A. I'm sorry. 22 Q. When you came back, the two people were 23 with Officer Jorg? 24 A. From -- yeah. From what I remember, yes.</p>	<p style="text-align: right;">Page 61</p> <p>1 that you determined that you weren't going to start 2 knocking on doors of apartments or you were -- you 3 were calling off your pursuit of this person? 4 A. Yes. 5 Q. Okay. And did you say something to that 6 effect to Officer Walker? 7 A. I told Officer Walker that "Don't worry 8 about it. We'll get him next time." 9 Q. At that point then you walked back to join 10 Officer Jorg? 11 A. Yes. 12 Q. Do you know what Officer Walker did? Did 13 he accompany you? 14 A. I don't recall. 15 (Ms. Geiler returned to the deposition 16 hearing room.) 17 Q. And I take it the time that Officer Walker 18 was with you at the apartment building Officer 19 Walker did not have anyone in custody? 20 A. Not to my knowledge, but I don't know. 21 Q. Where were you and Officer Jorg located -- 22 where were you and Officer Jorg located when you 23 first observed, I think you said drug transactions, 24 going on?</p>

Page 58 - Page 61

Owensby, et al. vs. City of Cincinnati
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DAVID WILLIAM HUNTER, JR.

<p style="text-align: right;">Page 74</p> <p>1 A. Well --</p> <p>2 Q. Did you want to say something?</p> <p>3 A. It was not -- it was not a set -- like</p> <p>4 a -- like a -- just one building. It was like</p> <p>5 buildings. It was --</p> <p>6 Q. Okay.</p> <p>7 A. You know, it was -- it was like two or</p> <p>8 three like together, but you can go through the</p> <p>9 courtyard and then you can come around, and there's</p> <p>10 like a building here on the right (indicating).</p> <p>11 That's the way Curtis went, Officer Walker. And</p> <p>12 then I was going to cut through.</p> <p>13 Q. All right. At some point, then, you</p> <p>14 folk-- you and Officer Walker split up and you start</p> <p>15 to go your way and he goes his, right?</p> <p>16 A. Yes.</p> <p>17 Q. At that point someone says something to</p> <p>18 warn the two individuals; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. That's the next thing that happens?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And that person, if I'm</p> <p>23 understanding you correctly, was Mr. Owensby?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Do you know if the individuals started</p> <p>2 running because of what Mr. Owensby said or because</p> <p>3 they saw a uniformed officer?</p> <p>4 A. Beca--</p> <p>5 MR. HARDIN: Objection.</p> <p>6 You may answer.</p> <p>7 A. Because of what Mr. Owensby said. Because</p> <p>8 when that happened, Officer Walker didn't have</p> <p>9 enough time to get around. So they -- they had --</p> <p>10 they had -- they -- they couldn't have possibly even</p> <p>11 seen him yet.</p> <p>12 Q. But as I understand it, Mr. Owensby was</p> <p>13 not one of the four individuals that you and Officer</p> <p>14 Jorg had observed conducting drug activity at the</p> <p>15 phone booth?</p> <p>16 A. That's correct.</p> <p>17 Q. He was just somebody that you happened</p> <p>18 upon as you were going around the building?</p> <p>19 A. Yes.</p> <p>20 Q. At that point, as I understand it, you</p> <p>21 walk up to Mr. Owensby and put your left hand on his</p> <p>22 shoulder?</p> <p>23 A. Yes.</p> <p>24 Q. What shoulder did you put it on?</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Are you sure of that?</p> <p>2 A. Yes.</p> <p>3 Q. What is the best of your recollection of</p> <p>4 what Mr. Owensby said?</p> <p>5 A. It was, The boys or Five-oh.</p> <p>6 Q. Say that again.</p> <p>7 A. It was either, The boys or Five-oh.</p> <p>8 Q. And in response to what -- could you see</p> <p>9 the two individuals at the time Mr. Owensby said</p> <p>10 this?</p> <p>11 A. They would -- they were just -- as he said</p> <p>12 it, they were just leaving out of my view.</p> <p>13 Q. Did you see -- so then you could not see</p> <p>14 what, if anything, they did in response?</p> <p>15 A. Oh. Ran.</p> <p>16 Q. You did see that?</p> <p>17 A. Yes. Uh-huh.</p> <p>18 Q. Okay. Do you know if Mr. Owensby said</p> <p>19 that toward them or was saying it to someone else?</p> <p>20 A. He's saying it toward them, because he</p> <p>21 turned to them and said it, in their direction.</p> <p>22 Q. Do you know where Officer Walker was at</p> <p>23 the time?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 77</p> <p>1 A. On his left shoulder.</p> <p>2 Q. Were you facing him face to face or did</p> <p>3 you come up from behind?</p> <p>4 A. Walking to his right, right beside him.</p> <p>5 Q. So you put your left arm -- you're --</p> <p>6 you're to his -- his right and you put your left</p> <p>7 hand on his left shoulder?</p> <p>8 A. Yes.</p> <p>9 Q. And you say "What's up?" And he says,</p> <p>10 "What's up?" And you say, you know, You can't be</p> <p>11 doing that, or something like that, right?</p> <p>12 A. Yes.</p> <p>13 Q. And he said, What do you -- What do you</p> <p>14 mean or what. And you said, What you just did. Is</p> <p>15 that right?</p> <p>16 A. Yes.</p> <p>17 Q. And then you started to reach in your</p> <p>18 shirt to pull your badge out, which was hanging on a</p> <p>19 chain around your neck?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know whether or not you got the</p> <p>22 badge all the way out before Mr. Owensby started to</p> <p>23 run?</p> <p>24 A. Yes, I got it out.</p>

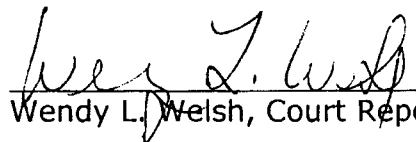
Page 74 - Page 77

AFFIDAVIT

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STATE OF OHIO :
COUNTY OF HAMILTON : SS

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of DAVID WILLIAM HUNTER, JR., deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.


Wendy L. Welsh, Court Reporter

Sworn to before me this 27th day of January, 2004.



Thomas M. Blasing
Notary Public - State of Ohio

My commission expires:
May 4, 2004.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

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CITY OF CINCINNATI, : VOLUME II
et al., :
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Continued videotaped deposition of DAVID
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Wendy Davies Welsh, a Registered Diplomate Reporter
and Notary Public in and for the State of Ohio, at
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1900 Fourth & Walnut Centre, 105 East Fourth Street,
Cincinnati, Ohio, on Thursday, December 4, 2003, at
10:11 a.m.

Pages: 107 - 282

Estate of Roger D. Owensby, Jr.
December 4, 2003

DAVID WILLIAM HUNTER, JR.
VOLUME II

Page 108	Page 110
<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. 4 Don Stiens, Esq. 5 Helmer, Martins & Morgan Co. LPA 6 Suite 1900, Fourth & Walnut Centre 7 105 East Fourth Street 8 Cincinnati, Ohio 45202 9 Phone: (513) 421-2400</p> <p>10 John J. Helbling, Esq. 11 The Helbling Law Firm, L.L.C. 12 3672 Springdale Road 13 Cincinnati, Ohio 45251 14 Phone: (513) 923-9740</p> <p>15 On behalf of the Defendants City of Golf Manor, 16 Stephen Tilley, Roby Heiland and Chris 17 Campbell:</p> <p>18 Wilson G. Weisenfelder Jr., Esq. 19 Rendigs, Fry, Kiely & Dennis 20 900 Fourth & Vine Tower 21 One West Fourth Street 22 Cincinnati, Ohio 45202-3688 23 Phone: (513) 381-9200</p> <p>24 On behalf of the Defendants City of Cincinnati, Darren Sellers, and Jason Hodge:</p> <p>25 Geri Hernandez Geller, Esq. 26 Assistant City Solicitor 27 Department of Law 28 Room 214, City Hall 29 801 Plum Street 30 Cincinnati, Ohio 45202 31 Phone: (513) 352-3346</p>	<p>1 Federal Rules of Civil Procedure, may be taken at</p> <p>2 this time by the notary; that said deposition may be</p> <p>3 reduced to writing in stenotype by the notary, whose</p> <p>4 notes may then be transcribed out of the presence of</p> <p>5 the witness; and that proof of the official</p> <p>6 character and qualifications of the notary is</p> <p>7 expressly waived.</p> <p>8 I N D E X</p> <p>9 Examination by: Page</p> <p>10 Mr. Martins 111, 277</p> <p>11 Mr. Hardin. 258</p> <p>12 - - -</p> <p>13 E X H I B I T S</p> <p>14 Deposition Exhibit 85 120</p> <p>15 Deposition Exhibit 86 131</p> <p>16 Deposition Exhibit 87 152</p> <p>17 Deposition Exhibit 88 219</p> <p>18 Deposition Exhibit 89 221</p> <p>19 Deposition Exhibit 90 234</p> <p>20 Deposition Exhibit 91 236</p> <p>21 Deposition Exhibit 92 238</p> <p>22 Deposition Exhibit 93 244</p> <p>23 Deposition Exhibit 94 244</p> <p>24 Deposition Exhibit 95 245</p> <p>25 Deposition Exhibit 96 250</p> <p>26 - - -</p>
Page 109	Page 111
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Page 108 - Page 111

(800) 578-1542 * MERIT * (513) 381-8228

Estate of Roger D. Owensby, Jr.
December 4, 2003

DAVID WILLIAM HUNTER, JR.
VOLUME II

Page 124	Page 126
<p>1 MS. GEILER: Thank you.</p> <p>2 THE WITNESS: You're welcome.</p> <p>3 BY MR. MARTINS:</p> <p>4 Q. What happened once you saw Mr. Owensby</p> <p>5 walking in the vicinity of Integrity Hall?</p> <p>6 A. Noth-- I brought it to Jorg and Caton's</p> <p>7 attention.</p> <p>8 Q. What did you say to them?</p> <p>9 A. I said, "That guy looked like the guy that</p> <p>10 ran from me. Remember when we" -- well, then I was</p> <p>11 talking to Officer Jorg. I said, "Remember when we</p> <p>12 was working old clothes that day?"</p> <p>13 Q. And what, if anything, did Jorg say in</p> <p>14 response?</p> <p>15 A. He asked me if I was sure if that was him.</p> <p>16 I said, "Well, from this distance and in this light,</p> <p>17 no, I can't be sure from here."</p> <p>18 Q. Were you able to tell at -- at that point</p> <p>19 in time whether or not Mr. Owensby had facial hair?</p> <p>20 A. From that distance?</p> <p>21 Q. From that distance.</p> <p>22 A. No.</p> <p>23 Q. What was it about the person that you saw</p> <p>24 by Integrity Hall that made you think it looked like</p>	<p>1 Q. And what I'm --</p> <p>2 A. -- previously.</p> <p>3 Q. -- trying to understand is, what were</p> <p>4 those features?</p> <p>5 A. His -- his build, his height, his -- I</p> <p>6 mean, just -- his stature. And like I said, it</p> <p>7 wasn't light -- I mean, the sun wasn't up, but it</p> <p>8 was -- it was like not completely dark either.</p> <p>9 Q. Can you identify any other distinguishing</p> <p>10 feature of the person that you saw by Integrity Hall</p> <p>11 that caused you to think that that was the same</p> <p>12 person that ran from you on September 27th?</p> <p>13 A. No. Not -- I mean, no.</p> <p>14 Q. The -- when you said -- pointed him out to</p> <p>15 Officer Jorg, do you know whether or not Officer</p> <p>16 Jorg said something to you to the effect, words to</p> <p>17 the effect that that takes balls to walk past</p> <p>18 cruisers and uniformed officers?</p> <p>19 A. That sound familiar to me. That -- that</p> <p>20 does sound familiar to me, but I can't recall.</p> <p>21 Q. I'm -- I'm not sure I'm quoting it</p> <p>22 direct -- correctly, but some -- words to that</p> <p>23 effect.</p> <p>24 A. I'm just saying I remember hearing</p>
Page 125	Page 127
<p>1 the person that had run from you on September 27th?</p> <p>2 A. His height, size. And from where I was</p> <p>3 standing, he was walking at an angle, and I could</p> <p>4 get like a -- I could see like his face from a</p> <p>5 distance as far as like, you know, he looked similar</p> <p>6 to the person that ran from me at that time.</p> <p>7 Q. What was his height?</p> <p>8 A. I don't know his height.</p> <p>9 Q. Would it be fair to say he was average</p> <p>10 height?</p> <p>11 A. Yeah. Medium build.</p> <p>12 Q. Average height, medium build?</p> <p>13 A. (Nodding head.)</p> <p>14 Q. Okay.</p> <p>15 A. Uh-huh.</p> <p>16 Q. And if I understand you correctly, from</p> <p>17 his -- from that distance you could not tell if he</p> <p>18 had facial hair. Were there any other</p> <p>19 distinguishing characteristics about him that caused</p> <p>20 you to think that he was the person that ran from</p> <p>21 you on September 27?</p> <p>22 A. Like I say, he just -- he had the features</p> <p>23 of the person that I remember that had ran from</p> <p>24 me --</p>	<p>1 something like that.</p> <p>2 Q. Okay. Did Officer Caton say anything to</p> <p>3 you?</p> <p>4 A. I don't remember. I mean, I --</p> <p>5 Q. When you were talking to Officer Jorg,</p> <p>6 pointing out this person over by Integrity Hall, was</p> <p>7 Officer Caton there also?</p> <p>8 A. Yes.</p> <p>9 Q. Did Officer Jorg explain or -- or did you</p> <p>10 explain to Officer Caton who this person was that --</p> <p>11 that you were referring to?</p> <p>12 A. Well, he was standing there while me and</p> <p>13 Jorg was talking, so he could just gather it from</p> <p>14 that what we were talking about, because he knew</p> <p>15 about the incident.</p> <p>16 Q. And that's what I'm trying to understand,</p> <p>17 is how did he know about the incident?</p> <p>18 A. From Jorg, I'm sure.</p> <p>19 Q. Did -- did -- did you hear Jorg talk to</p> <p>20 him about the incident?</p> <p>21 A. No, but me and Jorg was talking back and</p> <p>22 forth about the incident.</p> <p>23 Q. And Caton was there?</p> <p>24 A. And Caton was there.</p>

Page 124 - Page 127

Estate of Roger D. Owensby, Jr.
December 4, 2003

DAVID WILLIAM HUNTER, JR.
VOLUME II

<p style="text-align: right;">Page 128</p> <p>1 Q. And what you were telling Officer Jorg, 2 was that reminding him about the incident on 3 September 27th when the guy ran away from you, you 4 had grabbed the hood of the sweat shirt? 5 A. Yes. 6 Q. What happened next? 7 A. I asked Officers Jorg and Caton to walk 8 over to the Sunoco lot with me, because I wanted to 9 get a closer look to see if that was -- if I can 10 identify him, positively identify this individual. 11 So we walked over to the Sunoco lot -- me, 12 Officer Caton and Officer Jorg -- and I looked at -- 13 Was you about to say something? 14 Q. I was going to stop you -- 15 A. Oh. 16 Q. -- just to ask you some -- some questions 17 there. Did you -- before you, Officer Jorg and 18 Officer Caton started to head over to the Sunoco 19 lot, did you mention to Jorg and Caton that the 20 person you were looking for was known as LA? 21 A. Yes. 22 Q. And did either Jorg or Caton make any 23 attempt to go to see if the person that was in the 24 back seat of Hasse's cruiser knew who this LA person</p>	<p style="text-align: right;">Page 130</p> <p>1 Q. Okay. The person that they had in the 2 back seat of the car had been arrested for 3 possession of marijuana, right? 4 A. Yes. 5 Q. And it was less than 100 grams, so it was 6 a minor misdemeanor? 7 A. Yes. 8 Q. Did you see the bag of marijuana? 9 A. No, I don't remember seeing it. 10 Q. Do you know whether or not there was one 11 bag, two bags that they had -- 12 A. I don't -- 13 Q. -- charged the person with? 14 A. I don't know. 15 Q. As you and Jorg and Caton walked over to 16 the Sunoco station, did anyone mention a concern 17 that this person LA was known to be armed, carry a 18 firearm? 19 A. No. 20 Q. As you walked to the station, did -- at 21 that point in time, had anyone told you that LA is 22 known to be carrying a firearm? 23 A. No. 24 Q. Let's continue, then. You get -- you get</p>
<p style="text-align: right;">Page 129</p> <p>1 was? 2 A. I don't know if they had done that or not, 3 but from the time I asked them to walk over to the 4 lot with me, we just walked over. At that time they 5 did not, but I don't know if they had previously 6 asked about that or -- you know. 7 Because when I was up there on the scene, 8 I might have -- I remember saying something to 9 either Hasse or to Sellers. Because when they said 10 they had -- when I said we was just standing around 11 talking, I asked one of those officers if the person 12 they had in the back of the car, if he knew LA or if 13 he bought his, whatever he -- this marijuana that he 14 had, from an individual known as LA, nickname LA. 15 Q. And did they -- whoever you told this to, 16 did they go and ask the person? 17 A. I believe they did. 18 Q. And did they come back with an answer? 19 A. I don't remember if they -- at that time 20 if they came back and said anything or not. 21 Q. And this would have been before you saw 22 Mr. Owensby walking -- 23 A. Yes, that would be before I saw him 24 walking.</p>	<p style="text-align: right;">Page 131</p> <p>1 to the Sunoco station. What happens at that point? 2 A. I walk up and I looked in the window, 3 which the window I looked in, it's directly behind 4 the cash register and the clerk would be standing 5 right in front, you know, right there with his back 6 to that window. And then people making purchases 7 would be facing that -- that direction. 8 Q. Let me give you what I'm going to mark as 9 Exhibit 86, and it is a drawing of the Sunoco 10 station. 11 (Deposition Exhibit 86 12 was marked for identi- 13 fication.) 14 Q. If you would just indicate with a circle 15 and the number 1 where you were located, the -- the 16 window that you were looking through. 17 A. (Witness complies.) 18 Q. Thank you. Were -- were Jorg and Caton 19 standing at that window with you? 20 A. They were standing just behind me. 21 Q. All right. What happens at that point? 22 A. I look in the window. The -- the person, 23 Mr. Owensby, he steps to the counter to pay for his 24 drink. And I step back and I tell Caton and Jorg, That's him.</p>

Estate of Roger D. Owensby, Jr.
December 4, 2003

DAVID WILLIAM HUNTER, JR.
VOLUME II

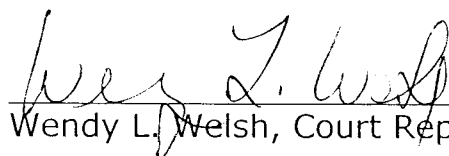
<p style="text-align: right;">Page 132</p> <p>1 Q. At that point did you feel that you had 2 made a positive identification? 3 A. Yes. 4 Q. Did you think that at that point you had 5 probable cause to arrest him? 6 A. Yes. 7 Q. And what would the charge be? 8 A. Obstructing and jaywalking. 9 Q. The obstructing refers to what? 10 A. Our investigation, our original 11 investigation where he warned other individuals that 12 we are trying to apprehend that we were coming. 13 Q. And that, you're referring there back to 14 the September 27th incident? 15 A. Yes. 16 Q. At that incident, and we covered this the 17 last time that we met, as I understand it, there 18 were four individuals that you and Officer Jorg were 19 observing. As you approached Sam's, two individuals 20 crossed the street and headed toward Huntington 21 Meadows, which you followed, and Officer Jorg 22 arrested the two individuals that remained at the 23 Sam's telephone booth area; is that right? 24 A. That's the -- that's what I remember.</p>	<p style="text-align: right;">Page 134</p> <p>1 Q. Okay. And then the second person -- 2 Mr. Nixon -- 3 MR. HARDIN: I'm just going to object on 4 asked and answered already. 5 Go ahead. 6 Q. The second person, Mr. Nixon, is charged 7 with criminal trespass? 8 A. Yes. 9 Q. All right. So as of November 7th you had 10 no -- no evidence that there was any drug activity, 11 any sale of drugs going on on the afternoon or 12 evening of September 27th. 13 MR. HARDIN: Objection. 14 Q. Right? 15 MR. HARDIN: The form of the question. 16 A. On September 27th? 17 Q. No, no. On the day we're talking about, 18 November 7th -- 19 A. Okay. 20 Q. -- you said that you were going to arrest 21 Mr. Owensby for obstructing. And the obstructing 22 was -- 23 A. Was the previous. 24 Q. -- was in relation --</p>
<p style="text-align: right;">Page 133</p> <p>1 That's -- 2 Q. Okay. And as a result of that, two 3 individuals -- the two individuals that Officer Jorg 4 arrested had no drugs on them, no large sums of 5 money, correct? 6 A. I don't know about the money, but as far 7 as drugs, they weren't charged. So I assume that 8 they didn't have any on them. 9 Q. And in fact, they were charged with 10 criminal trespass, right? 11 A. Yes. 12 Q. And I think one person was charged with an 13 open container of Budweiser; is that right? 14 A. I don't remember that. 15 Q. Let me show you -- this has previously 16 been marked as Exhibit 6. Exhibit 6 is comprised of 17 two tickets or arrests, investigation -- I'm sorry, 18 two arrest and investigation reports, the first one 19 for a Jaysen Hill, arrested on September 27th. The 20 time was about 5:10 and -- or 5:00, and the 21 arresting officer was Officer Jorg. And you see 22 that for Mr. Hill he's charged with trespass and an 23 open -- open container. See that? 24 A. Yes.</p>	<p style="text-align: right;">Page 135</p> <p>1 A. Right. 2 Q. -- to September 27? 3 A. That's correct. 4 Q. And what I'm saying is on November 7th 5 now -- 6 A. Okay. 7 Q. -- you know that you had no evidence of 8 any drug activity on September 27, because the two 9 people you arrested you found no drugs on, no large 10 sums of money, correct? 11 MR. HARDIN: Objection. 12 A. Yeah. On that day our investigation was 13 incomplete because of his obstructing, because of 14 the two people that got away. Those two people, you 15 know, as far as evidence, the -- if the question is 16 did we have physical evidence, no, because they got 17 away. 18 Q. Did you have any evidence that -- that the 19 two people that ran away were dealing in drugs? 20 A. Nothing but the observations that we made 21 before we moved in. 22 Q. And the observations that you had made 23 were based on four people acting in concert, 24 correct?</p>

AFFIDAVIT

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STATE OF OHIO :
: SS
COUNTY OF HAMILTON :

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of DAVID WILLIAM HUNTER, JR., deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.


Wendy L. Welsh, Court Reporter

Sworn to before me this 27th day of January, 2004.



Thomas M. Blasing
Notary Public - State of Ohio

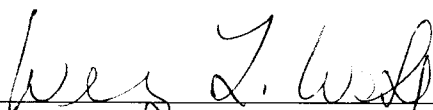
My commission expires:
May 4, 2004.

AFFIDAVIT

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Wendy L. Welsh, Court Reporter

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Thomas M. Blasing
Notary Public - State of Ohio

My commission expires:
May 4, 2004.